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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

STATE OF CALIFORNIA et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

JUAN ALVAREZ et al.,

Real Parties in Interest.

G041529

(Super. Ct. No. 30-2008-00111296)

O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Frederick P. Horn, Judge. Petition granted.

Edmund G. Brown, Jr., Attorney General, James M. Sciavenza, Senior Assistant Attorney General, Marsha S. Miller and Kenneth G. Lake, Deputy Attorneys General for Petitioners.

No appearance for Respondent.

Law Offices of Federico Castelan Sayre and Kent M. Henderson for Real Parties in Interest.

* * *

THE COURT:^{*}

Under the Government Claims Act, when a public entity denies leave to present a late claim, a claimant who wants to file a civil complaint must first file a petition for relief from the government claims requirement in the superior court within six months of the public entity's denial. (Gov. Code, § 946.6.) The six months runs from the date of denial, not the date of the notice of denial. (*Rason v. Santa Barbara City Housing Authority* (1988) 201 Cal.App.3d 817, 824.) Here, the superior court granted a petition for relief even though it was filed more than six months after the request to present a late claim was denied. This was clear error. Therefore, the petition for writ of mandate will be granted and a peremptory writ of mandate will issue commanding the superior court to enter a new order denying the petition.

I

Juan and Josephina Alvarez were involved in a serious automobile accident on the 55 freeway in the city of Orange that resulted in the death of their two adult sons, Juan and Ricardo Davilla. They were rear-ended by Janelle Zaspal. Their vehicle erupted into flames and the Davilla men burned to death. For reasons that are immaterial to the merits of this writ petition, the Alvarazes failed to file a timely claim under the Government Claims Act. On October 22, 2007, however, they filed a request to present a late claim, arguing they had only just become aware of Zaspal's capacity as an employee of the California Highway Patrol.

By letter dated January 25, 2008, staff of the Victim Compensation and

^{*} Before Sills, P. J., Moore, J., and Fybel, J.

Government Claims Board advised the Alvarezes' counsel "the staff is recommending to the Board that the late claim application be denied for failure to meet the criteria of Government Code section 911.6." The letter stated that, "Your late claim application will be acted upon by the Board at its meeting on February 21, 2008. Following this meeting, you will be sent a notice that confirms the Board's action." It added, "Your next recourse, should you wish to pursue the matter further, will be to file a petition in court for relief from the requirements of Government Code Section 945.5. You will have six months from the date of the denial to file a petition."

By letter dated February 29, 2008, the Board advised the Alvarezes' counsel that, "The Victim Compensation and Government Claims Board (VCGCB), at its hearing on February 21, 2008, denied your application to present a late claim." The "Warning" language at the bottom of the letter stated, in pertinent part, that, "If you wish to file a court action on this matter, you must first petition the appropriate court for an order relieving you from the provisions of Government Code 945.4. (Claim presentation requirement). See Government Code Section 946.6. Such petition must be filed with the court within six (6) months from the date your application for leave to present a late claim was denied."

On August 29, 2008, the Alvarezes filed a petition for relief in the superior court pursuant to Government Code section 946.6. They alleged their petition was timely because "Petitioner's [*sic*] application for permission to file a late claim was denied by notice of rejection on or about February 29, 2008, without providing any basis for their denial of claims." The State of California and Janelle Zaspal opposed the petition, partly on the ground it was filed more than six months after the Alvarezes' application to file a late claim was denied. They cited *Rason v. Santa Barbara City Housing Authority* as binding authority, and they iterated their argument at the hearing that the petition was statutorily barred and therefore must be denied. The court retorted that, "I think it should be the date notice was received, otherwise it wouldn't be equitable." When advised by

counsel that the *Rason* case “is directly on point,” the court stated it was “inclined to grant” the petition on its merits, but “I’ll take a look at that case and see if it’s controlling.”

The superior court took the matter under submission. Later it issued a minute order in which it granted the petition for relief. There was no mention of *Rason*, and no reasons for granting relief were given.

The State of California and Zaspal then filed the instant petition and requested issuance of a peremptory writ of mandate. This court invited a letter brief in opposition to the petition and advised the Alvarezes it was considering issuance of a writ of mandate in the first instance. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) The Alvarezes filed a letter brief. Nothing in their brief, however, offers any substantive or procedural reason why a peremptory writ of mandate should not issue here.

II

The law is clear: A petition for relief filed in the superior court pursuant to Government Code section 946.6 to be relieved of the requirements of filing a government claim must be filed within six months of the public entity’s denial of that claim or the petition is untimely. (*Rason v. Santa Barbara City Housing Authority, supra*, 201 Cal.App.3d at p. 824; see 1 Cal. Government Tort Liability Practice (Cont.Ed.Bar 4th ed. 2009) § 7.42, pp. 376-377; 3 Witkin, Cal. Procedure (5th ed. 2008) Actions, § 304, p. 392; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 1:766 to 1:767, p. 1-166.1; Hersh, et al., Cal. Civil Practice: Torts (West Group 2008) § 30:15.) The six-month period is best understood as a statute of limitations. (*Lineaweaver v. Southern California Rapid Transit Dist.* (1983) 139 Cal.App.3d 738, 740-741.) As such, a petition for relief that is not filed within six months of the public entity’s denial must be denied. Here, the petition for relief was filed 190 days after the Board denied the application to file a late claim, which was at least

eight days beyond the last day to file the petition. Thus it was error for the superior court to have granted the petition for relief, even if it thought the limitations period as set out by the Legislature—to run from the date of denial rather than the date notice of the denial was received—somehow seemed inequitable.

The Alvarazes do not challenge the holding in *Rason*. Rather, they argue that it is within the sound discretion of the superior court as to whether to grant relief and, so long as the public entity is not prejudiced, the court may grant the petition even if it is filed a day or so late. They also echo the superior court’s sentiment that the six-month period within which to file a petition for relief begins to run, or equitably should run, from the date notice of the denial is mailed or received by the claimant. Those arguments were rejected in *Rason*. “The clock begins to run on the date that the application is denied, even though the notice is mailed or delivered at a later date. [Citations.]” (*Rason v. Santa Barbara City Housing Authority, supra*, 201 Cal.App.3d at p. 824.) To the valid concern that a public entity could “ambush a claimant by intentionally or negligently delaying notice of denial of the application” (*ibid.*), the *Rason* court responded that, “If such a delay was considerable, due process might estop the public entity from asserting that the six-month period ran from the date action was taken. For example, if notice of a denial is given five months and twenty-eight days later, absent unusual circumstances, the public entity would be estopped from blocking a claim due to the running of the six-month period. The claimant would be granted a reasonable period of time in which to file a petition. [Citation].” (*Id.* at p. 825.)

There were no unreasonable delays, due process violations, or other reasons supporting estoppel alleged here. Counsel for the Alvarazes first received a letter from staff of the Government Claims Board advising that the staff recommendation was to deny the late claim and the Board would hear the matter on February 21. Counsel then received a February 29 letter from the Board indicating that on February 21 the claim was denied. Both letters advised the Alvarazes that any petition for relief must be filed in the

superior court within six months of the date of the denial. The Alvarezes complain that the warning language was “buried” in the letter of denial. The argument grasps at straws because a review of the letter shows the pertinent advisement was front and center and unambiguous. Indeed, the Board would have been hard pressed to give any clearer notice of the denial of the claim, the date of the denial, and when a petition for relief under the Government Code had to be filed in the superior court.

Finally, the Alvarezes assert the writ petition should be summarily denied because the order is “appealable.” When the Alvarezes argue the order is appealable, they mean the order may be reviewed on appeal from any final judgment. Relying on basic principles articulated in the leading case of *Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, they note that petitions for extraordinary relief are discretionary and appellate courts generally do not take them if “any error might later be cured at the trial level,” “review on a subsequent appeal may provide an adequate remedy,” or “the case might settle in the interim.” Those are all valid reasons why an appellate court might refuse to take a writ petition in a particular case. But none of those reasons precludes an appellate court from exercising its discretion to take a writ petition where the superior court improperly granted relief from the government claim filing requirements. (See, e.g., *People ex rel. Dept. of Transportation v. Superior Court* (2003) 105 Cal.App.4th 39; *Department of Water & Power v. Superior Court* (2000) 82 Cal.App.4th 1288; *El Dorado Irrigation Dist. v. Superior Court* (1979) 98 Cal.App.3d 57.) Here the petition for relief was untimely and statutorily barred. Thus it “would be a waste of judicial resources” to allow the underlying action for wrongful death to proceed in reliance on the granting of an untimely petition for relief. (*H. D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1367.)

III

Let a peremptory writ of mandate issuing commanding the superior court to vacate its order granting the petition for relief and to enter a new and different order

denying the petition. Petitioners are awarded their costs in this proceeding. (Cal. Rules of Court, rule 8.493(a)(2).)